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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,964	01/28/2002	Yasuko Rikihisa	22727/04109	8510
24024	7590	02/10/2004	EXAMINER	
CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114			SWARTZ, RODNEY P	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/059,964

Applicant(s)

RIKIHISA ET AL.

Examiner

Rodney P. Swartz, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 5November2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-20 and 24-30 is/are pending in the application.
- 4a) Of the above claim(s) 20 and 27 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15,19,25,26 and 28-30 is/are allowed.
- 6) ☒ Claim(s) 16-18 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 15-20 and 24-30 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicants' Response to Office Action, received 5 November 2003, is acknowledged.

Claims 15-19, 24-26, 29, and 30 have been amended.

2. Claims 15-20 and 24-30 are pending. Claims 20 and 27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

3. Claims 15-19, 24-26, and 28-30 are under consideration.

### **Rejections/Objections Withdrawn**

4. The objection to claim 15 is withdrawn in light of the amendments of the claim.

5. The objection to claim 19 is withdrawn in light of the amendments of the claim.

6. The rejection of claim 16 under 35 U.S.C. 112, second paragraph, as being indefinite for being dependent from canceled claim 5 is withdrawn in light of the amendment of the claim.

7. The rejection of claim 19 under 35 U.S.C. 112, second paragraph, as being indefinite, is withdrawn in light of the amendment of the claim.

8. The rejection of claims 15-19 and 24 under 35 U.S.C. 112, first paragraph, scope of enablement for variants of the polypeptide, is withdrawn in light of the amendment of the claims.

### **Objection/Rejection Maintained**

9. The objection to Figure 34 under M.P.E.P. §2422.02 because of a lack of sequence identifiers in either the Figure or the Brief Description is maintained.

### **Specification**

10. The disclosure is objected to because of the following informalities:

a) The Brief Description of Fig. 24 and Fig. 25 are objected to because part A of each description refers to Fig. 22.

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b) the status of the priority application should be updated to reflect that it is now U.S.

Pat. No. 6,544,517, and that the number of the provisional application is 60/100,843.

Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 16-18; and 24 are rejected under 35 U.S.C. 112, second paragraph, because there is insufficient antecedent basis for the limitation "said protein" in claims 16-18, and "wherein the polypeptide" in claim 24. The claims depend from claim 15 which recites "one or more" "proteins" of *E. chaffeensis* and/or *E. canis*. It is unclear in claims 16-18 to which proteins are being referred. It is recommended that the language recite, e.g., "wherein said outer membrane protein of *E. canis*" or "wherein said outer membrane protein of *E. chaffeensis*". It is unclear in claim 24 if the polypeptide recited is referring to the "protein" of claim 15, and which species of *Ehrlichia*.

### **Conclusion**

14. Claims 16-18 and 24 are rejected. Claims 15, 19, 25, 26 and 28-30 appear to be allowable.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., whose telephone number is (571) 272-0865.

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The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (571)272-0864



RODNEY P SWARTZ, PH.D  
PRIMARY EXAMINER  
Art Unit 1645

February 5, 2004